

REMARKS

Reconsideration of the present application is respectfully requested. Claims 2 and 13-24 have been canceled. Claims 1, 3, 11, and 46 have been amended. No new matter has been added.

Claims 1, 9, 13-19 and 46 stand rejected under 35 U.S.C. § 102(e) based on U.S. Patent no. 6,473,609 of Schwartz et al. ("Schwartz"). The remaining claims stand rejected under 35 U.S.C. § 103(a) based on Schwartz in view of one or more additional references.

§ 102(e) Rejections

Claims 1, 13 and 46 were the only independent claims rejected under 35 U.S.C. § 102(e). Claims 13-24 have been canceled. Claim 1 has been amended to incorporate the limitations of claim 2 (now canceled), which was rejected under § 103(e) based on Schwartz and Wehrend. Claim 46 has been amended in a similar way.

Because Schwartz is not effective as prior art under § 103 against the present application (see discussion below), the rejection of claim 2 was improper. Therefore, the incorporation of the limitations of claim 2 into claim 1 renders claim 1 patentable over the cited art. The same is true of claim 46. Therefore, Applicants respectfully submit that the rejections under § 102 have been overcome.

§ 103(a) Rejections

Each of the independent claims that is not mentioned in the preceding section was rejected under § 103(a) based on Schwartz and one or more other references.

However, in light of 35 U.S.C. § 103(c), Schwartz is not effective as § 103 prior art against the present application. Specifically: 1) Schwartz only qualifies as prior art, if at all, under one or more of 35 U.S.C. § 102(e), (f) or (g); and 2) at the time the present invention was made, the cited subject matter in Schwartz and the subject matter claimed in the present application were owned by, or subject to an obligation of assignment to, the same person.

Schwartz was initially assigned to Unwired Planet, Inc., which then changed its name to Phone.com, Inc. on April 19, 1999, and then subsequently changed its name to Openwave Systems Inc. on November 17, 2000 due to a merger. Documents reflecting these name changes were recorded at the PTO at reel/frame numbers 009613/0510, 012518/0043 and 012518/0077. At the time the present invention was made, the name of the entity which owned Schwartz was Phone.com, Inc.

Likewise, at the time the present invention was made, the present invention was at least subject to an obligation of assignment to Phone.com. The two inventors of the present application were both employees of Phone.com when the present invention was made and were obligated by their employment agreements (copies of which can be provided, if necessary) to assign their interests in the invention to Phone.com. Upon filing, the present application was, in fact, assigned by the inventors to Phone.com, Inc., which as noted above, subsequently changed its name to Openwave Systems Inc. Documents evidencing the chain of title to the present application are recorded at the PTO at reel/frame numbers 011086/0697 (to Phone.com) and 011513/0015 (to Openwave Systems Inc.).

Thus, at the time the present invention was made, the cited subject matter in Schwartz and the subject matter claimed in the present application were owned by, or subject to an obligation of assignment to, the same person (Phone.com, Inc.). Therefore, Schwartz is not effective as prior art under 35 U.S.C. § 103. Consequently, Applicants respectfully submit that all of the rejections under § 103 have been overcome.

Dependent Claims

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

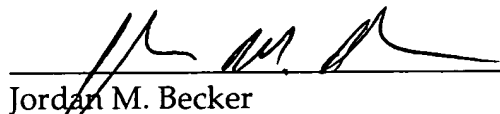
Conclusion

For the foregoing reasons, the present application is believed to be in condition for allowance, and such action is earnestly requested.

If any additional fee is required, please charge Deposit Account No. 02-2666.

Respectfully submitted,
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